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Paper No. 8

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**JUL 3 0 2003**

**OFFICE OF PETITIONS**

In re Application of :  
Michael Gormish, et al. :  
Application No. 09/823,739 :  
Filed: March 30, 2001 :  
Attorney Docket No. 074451.P132 :

**DECISION ON PETITION  
UNDER 37 CFR 1.137(b)**

This is a decision on the petition filed June 23, 2003, under 37 CFR 1.137(f) which is being treated under the unintentional provisions of 37 CFR 1.137(b), to revive the instant nonprovisional application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704. No additional petition fee is required.

Petitioner states that the instant non-provisional application is the subject of an application filed in a foreign country and the U. S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country. A review of the file record shows that a Request to Rescind was filed on May 7, 2002. However, petitioner has not provided the exact filing date of the foreign application. Before a proper determination on the merits of the petition can be decided, petitioner must supply the filing date of the foreign application.

Since it cannot be determined if the application is appropriately abandoned, a decision regarding petitioner's request for a refund of the petition fee cannot be rendered at this time.


Further correspondence with respect to this matter should be addressed as follows:

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ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-3475.

  
Marianne E. Morgan  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy